

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CRIMINAL JUSTICE

Administration of Victim Witness Advocacy Fund

Proposed Readoption: N.J.A.C. 13:78

Authorized By: Vaughn L. McKoy, Director

Division of Criminal Justice

Authority: N.J.S.A. 2C:43-3.1a(6)(c) and

N.J.S.A. 52:4B-43.1

Calendar Reference: See Summary below for an explanation of the
exception to the calendar requirement.

Proposal Number PRN 2003-_____

Interested persons may submit written comments relevant to
the proposal on or before 5:00 P.M., _____, 2003.

Comments and any inquiries about submissions or responses
should be submitted in writing to:

Office of Victim-Witness Advocacy

Public Comments: Administration of Victim Witness

Advocacy Fund

Division of Criminal Justice

PO Box 085

Trenton, New Jersey 08625-0085

Vaughn L. McKoy, Director

Date: November 24, 2003

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.S.A. 52:14B-5.1, which replaced Executive Order No. 66 (Byrne), the Division of Criminal Justice (hereafter "the Division") proposes the readoption of N.J.A.C. 13:78, the Administration of Victim Witness Advocacy Fund (hereafter "the Fund") rules, created pursuant to P.L.1979, c.396, §2, N.J.S.A. 2C:43-3.1a. Pursuant to N.J.S.A. 52:14B-5.1c, the current rules expire on November 24, 2003.

An administrative review has been conducted, and a determination has been made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated. The Director now proposes to readopt the existing rules. As the Division has provided a 60-day comment period for this readoption proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

The Director proposes to: readopt N.J.A.C. 13:78 in its entirety. The proposed readoption will continue these regulations in full force and effect, thereby complying with the provisions of N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1.

Should these regulations not be readopted, the requirements imposed on the Division of Criminal Justice, by the Legislature, concerning the administration of funds for the benefit of victims and witnesses of crime, to support the development and provision of services to victims and witnesses of crimes and for the related administrative costs will not be capable of being fulfilled.

The proposal contains seven subchapters, entitled:
Subchapter 1 - General Provisions; Subchapter 2 - Eligibility;
Subchapter 3 - Application for Moneys by Eligible Entities and Organizations; Subchapter 4 - Funding of Awards; Subchapter 5 - Allocation and Disbursement from Fund; Subchapter 6 - Use of Fund Distributions; and Subchapter 7 - Accounting and Audit.

An overview of the rules proposed for readoption follows.

Subchapter 1 contains the general provisions for Administration of the Victim and Witness Advocacy Fund. It describes the purpose, legal authority, and scope of the rules governing its administration and defines terms as used therein.

N.J.A.C. 13:78-1.1, The rules of this chapter govern the administration of the Fund.

N.J.A.C. 13:79-1.2, The Director of the Division is responsible to establish the Fund rules.

N.J.A.C. 13:78-1.3, The rules in this chapter govern the allocation of moneys from the Fund.

N.J.A.C. 13:78-1.4, Defines the words and terms as used in this chapter.

Subchapter 2 outlines the eligibility requirements to become an eligible qualified public entity or eligible qualified not-for-profit organization, including notification, appeals, and public notice of qualified public entities and qualified not-for-profit organizations determined to be eligible. This subchapter represents the first step of a two-step process, in which eligibility is determined by the Director on an annual basis, and then, under Subchapter 5, awards can be made to eligible qualified public entities and eligible qualified not-for-profit organizations whose applications otherwise satisfy the statutory criteria of providing direct services to victims and witnesses of crimes.

Subchapter 3 refers to the application process. Once a qualified public entity or qualified not-for-profit organization has been determined by the Director to be eligible, this subchapter represents the next stage of the two-step process discussed in Subchapter 2 and provides for an application process to apply for an award.

Subchapter 4 elucidates the amount of moneys available for awards.

Subchapter 5 describes the manner in which available moneys from the Fund are allocated.

N.J.A.C. 13:78-5.1, Available moneys deposited in the Fund shall be allocated by the Director in this order of priority.

N.J.A.C. 13:78-5.2, The Director determines the amount required to be disbursed to State and County Offices of Victim-Witness Advocacy in accordance with these procedures.

N.J.A.C. 13:78-5.3, A committee shall review applications submitted by other public entities in order to make recommendations to the Director.

N.J.A.C. 13:78-5.4, A committee shall review applications submitted by eligible public entities and eligible not-for-profit organizations to make recommendations to the Director.

N.J.A.C. 13:78-5.5, Any public entity receiving money from the Fund shall comply with all applicable laws.

N.J.A.C. 13:78-5.6, Notifications of allocations and awards shall be made by the Director in accordance with these procedures.

Subchapter 6 describes the manner in which Victim and Witness Advocacy Funds may be used by county Offices of Victim and Witness Advocacy, other public entities, or eligible not-for-profit organizations.

N.J.A.C. 13:78-6.1, Moneys from the Fund shall be used to implement the legislative mandates and the Attorney General Standards and shall not supplant budgeted funding or any other available funding.

N.J.A.C. 13:78-6.2, Moneys from the Fund disbursed to eligible public entities and eligible not-for-profit organizations shall be used for direct services to victims.

Subchapter 7 describes the manner in which entities which receive moneys from the Fund must segregate these moneys in accounts and maintain financial records.

In 1989, the Director adopted new rules (R. 1989, d. 159) to govern the administration of the Fund. Those rules governed the distribution, disbursement and use of moneys from the Fund to the State Office of Victim-Witness Advocacy in the Division, the county Offices of Victim and Witness Advocacy in the offices of the county prosecutors, and other public entities as deemed appropriate for implementation of the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, N.J.S.A. 52:4B-44.

With the adoption of P.L.1991, c.329, §20, N.J.S.A. 52:4B-43.1, the Legislature authorized the continued use of moneys from the Fund for county prosecutors and other public entities and expanded the types of public entities and not-for-profit organizations which could become eligible to apply for an award from the Fund. In response to that legislation, the Director, in the 1993 readoption, adopted amendments to these rules "to ensure that funds are given to qualified entities that will provide services consistent with this Act, shall award grants to

qualified public entities and not-for-profit organizations that provide direct services to victims and witnesses, including but limited to such services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; (9) financial services." R.1993, d.687. The legislation continued by identifying certain not-for-profit organizations as "eligible to apply for grants." The list of eligible not-for-profit organizations is not, however, limited to those found in the statutory list.

Social Impact

When these rules were first proposed, the focus of the Social Impact Statement was on the responsibility of persons involved in the criminal justice system to alleviate the burdens the criminal justice system can impose on victims and witnesses. Following the enactment of P.L.1991, c.329, that goal was restated and continued, but with a new emphasis. In particular it provided for a mechanism whereby qualified public entities and

qualified not-for-profit organizations, that provide direct services to victims and witnesses, to apply for awards from the Fund.

The authorizing legislation does not, however, create an entitlement to an award, but it creates a mechanism for the Director to adopt rules to determine which of these public entities and not-for-profit organizations is eligible and qualified to apply for an award to provide direct services to victims and witnesses of crimes.

By granting awards from the Fund to qualified public entities and qualified not-for-profit organizations, the legislative mandate to provide direct services to victims and witnesses can be fulfilled.

Economic Impact

These rules have not had and are not anticipated to have any adverse economic impact on the public, because the enabling legislation provides that the substantial portion of monies from the fund shall come from the imposition of a fee, in addition to fines and penalties, on persons convicted of crimes, disorderly persons offenses, and drunk driving.

The Legislature has determined that persons convicted on offenses shall be assessed fees in addition to the fines imposed

by statute for specific violations of the law. Those fees are assessed pursuant to N.J.S.A. 2C:43-3.1. That statute created a fund called the Victim and Witness Advocacy Fund, N.J.S.A. 2C:43-3.1a(6)(c). That Fund has been designated as "a separate, nonlapsing, revolving fund" administered by the Division of Criminal Justice, and "all moneys deposited in that Fund ... shall be used for the benefit of victims and witnesses of crime" as provided in N.J.S.A. 52:4B-43.1 and for related administrative costs.

N.J.S.A. 52:4B-43.1, authorizes the Director to adopt rules and regulations "to ensure that funds are given to qualified entities that will provide services consistent with this act, shall award grants to qualified public entities and not-for-profit organizations that provide direct services to victims and witnesses, including but not limited to such services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; (9) financial services; and medical testing ordered by a court pursuant to section 4 of P.L.1993, c.364 (C.2C:43-2.2)."

Awards of moneys from the Fund to qualified public entities and qualified not-for-profit organizations will provide an important adjunct to existing victim and witness assistance and advocacy programs presently operating through the State Office of Victim-Witness Advocacy, county Offices of Victim and Witness Advocacy and other public entities. These awards will not increase the need for public expenditures for services to victims and witnesses and should broaden the ability to extend these services throughout the State.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption were not issued: (1) under the authority of any Federal law or State statute that incorporates or refers to Federal law, Federal standards or Federal requirements; or (2) to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Jobs Impact

The Division of Criminal Justice anticipates that the rules proposed for readoption will not result in the creation of new jobs or cause the loss of existing jobs.

Agricultural Industry Impact

The rules proposed for readoption will not have any impact on the agricultural industry in New Jersey or elsewhere.

Regulatory Flexibility Statement

The Director finds that a regulatory flexibility analysis is not required under the provisions of N.J.S.A. 52:14B-16 because they are not subject to federal standards. The administration of the Fund regulations do not impose reporting, record keeping or other compliance requirements on small businesses. The regulations impose duties and responsibilities upon the Division of Criminal Justice, the county Offices of Victim and witness Advocacy, other public entities, qualified public entities and not-for-profit organizations pursuant to N.J.S.A. 52:4B-43.1 none of which qualify as a small business.

Smart Growth Impact

The rules proposed for readoption will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey administrative Code at N.J.A.C. 13:78.